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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,475	07/09/2001	Dominique Briere	011496/236625	7468

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EXAMINER

DAVIS, ROBERT B

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 04/14/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,475

Applicant(s)

BRIERE ET AL.

Examiner

Robert B. Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8,9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22, 23 and 26-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Flynn et al (3,857,660: figures 3 and 5, and column 5, lines 8-18).

Flynn et al teach a mold assembly comprising: two mold shells (83, 84) containing a half impression of a substantial portion of the mold cavity (figures 3 and 5), which includes a base portion, a sidewall portion and a neck portion as shown in figure 3, two mold shell holders (57, 63) which are in contact to allow thermal conduction between the shells and the shell holders (see figures 3 and 5), and an axial positioning assembly which comprises a shoulder (85) and a corresponding recess (figure 3) to fix the shell axially within the shell holder. The shoulder or rib (85) is adjacent the neck portion of the mold cavity as shown in figure 3.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn et al taken together with taken together with Pearson (3,632,249: figures 2, 3, 10 and 11 and column 2, line 52 to column 3, line 45).

Flynn et al disclose all claimed features except connections of heating and/or cooling fluid through internal pipes in the walls of the mold shell.

Pearson discloses a container forming mold assembly comprising: mounting mold shell holders (25, 27) onto supports (59, 62) for movement during the molding operations (as shown in figure 2), and making connections (30) of heat exchange supply pipes into pipes (31) in the mold shell holders. The reference clearly states that the inserts (35) allow increased article producing flexibility because the shape of the molding cavity can be changed without removing the shell holders. An operator can merely replace the inserts to form a different article. The reference further states that the cooling pipes are formed in the shell holders so as not to require complicated attachment of the cooling pipes to channels in the replaceable inserts.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the apparatus of Flynn et al by providing the shell holders with heat exchange pipes and connections of fluid supplies to the shell holders as disclosed by Pearson for the purpose of allowing quick replacement of the inserts by having the fluid transfer pipes in the holder which is not changed when changing the assembly by replacing one set of mold inserts with another set having a different size or shape.

6. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flynn et al taken together with taken together with French reference (2,659,265: figures 1-3).

Flynn et al disclose all claimed features except for one of the shells or shell holders defining a cavity at the interface between the shell and shell holder into which a pressurized fluid can be introduced to maintain sealing pressure.

The French reference discloses a cavity defining mold pieces (1 and 2) having a cavity (18) at the interface with a holder to allow introduction of a pressurized fluid via conduit (32) to maintain sealing pressure.

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the mold assembly of Turner et al by providing a cavity at the interface of a mold piece and the holder as disclosed by the French reference for the purpose of maintaining sealing pressure of the mold cavity.

Reissue Applications

7. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The reissue declaration is defective because it fails to identify Foreign application (France 95 04651) and International application (PCT/FR96/00576).

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

8. Claims 22-31 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

9. Claims 22-31 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue, which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

Original claim 1 of the patent included the following limitations.

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1. Device for manufacturing containers, made of a thermoplastic by blow molding or stretch-blow molding of a preheated preform, the said device including at least one mold (1) consisting of two half-molds (2) respectively supported by two mold carriers (3) which can move one with respect to the other, characterized in that each half-mold (2) comprises a shell holder (9) supported by the respective mold carrier (3) and a shell (7) which is provided with a half-impression (8) of the container to be obtained and which can be removably fastened to its shell holder (9) by quick-fixing means (19-23), the shell (7) and the shell holder (9) being in complementary shapes in order to be in at least partial mutual thermal-conduction contact while the pipes and connections for the circulation of cooling and/or heating fluids (11, 12) are provided exclusively in the shell holder.

The claim was amended to recite the following:

1. Device for manufacturing containers, made of a thermoplastic by blow molding or stretch-blow molding of a preheated preform, the said device including at least one mold (1) consisting of two half-molds (2) respectively supported by two mold carriers (3) which are made in the form of enveloping structures and which can move one with respect to the other, characterized in that each half-mold (2) comprises a shell holder (9) supported by the respective mold carrier (3) and a shell (7) which is provided with a half-impression (8) of the container to be obtained and which can be removably fastened to its shell holder (9) by quick-fixing means (19-23), the shell (7)

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and the shell holder (9) being in complementary shapes in order to be in at least partial mutual thermal-conduction contact while the pipes and connections for the circulation of cooling and/or heating fluids (11, 12) are provided exclusively in the shell holder.

Claim 22 recites a mold assembly comprising two mold shells and two mold shell holders and an axial positioning assembly. Claim 22 does not include the mold carriers in the form of enveloping structures or the at least one quick fixing means. Claim 27 merely recites a mold shell with a male or female coupling. Claim 27 does not include the shell holders, the mold carriers in the form of enveloping structures or the at least one quick fixing means.

Hence, these claims are broader than the patent claim 1. Further, the subject matter of original claim 1 was amended to overcome an art rejection. Applicant added to the limitation of "two mold carriers" the following phrase "which are made in the form of enveloping structures". On page 6 amendment filed September 28, 1998, applicant argues that "Appel does not teach or suggest a device with mold carriers which sound (typo for surround) respective shell holders. Moreover, even if one imagines that elements 43, 44 in Appel are shell holders, that elements, 130, 131 are shells and that elements (axis and arms 118-121) are mold carriers, such an argument would be erroneous from a structural point of view. This is true for at least the reason that the above-mentioned elements are obviously pivot elements corresponding to axis 4 of the present invention. Moreover, even assuming arguendo that rods 118-119 are mold carriers, said rods are surely not surrounding elements, and they cannot provide rigidity,

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contrary to standard mold-carriers." It is clear that the mold-carriers are positive structural elements of claim 1 of the patent. It is further clear that the mold carriers limitation was amended and argued by applicant to overcome a prior art rejection. The present claims 22 and 27 have been amended to further define the structure of the mold shell to have an axial positioning assembly, but the absence of the mold carriers being in the shape of enveloping structures, the at least one quick fixing means and in the case of claim 27 the shell holders from these claims constitutes recapture. See *In re Clement*, 45 USPQ2d 1161 (Fed. Cir. 1997).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Davis whose telephone number is 703-308-2625. The examiner can normally be reached on Monday-Friday 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Robert B. Davis
Primary Examiner
Art Unit 1722

March 28, 2003

3/28/03